BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

IN THE MATTER OF:	)	
	)	
WEST CONTRA COSTA	)	**CC Docket No. 02-6**
UNIFIED SCHOOL DISTRICT	)	

Request for Review

The West Contra Costa Unified School District (West Contra Costa) respectfully requests the Federal Communications Commission review and overturn the funding reduction of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). West Contra Costa[1] specifically appeals the March 27, 2012 funding reduction of Year 2011 Form 471 Application 792679, Funding Request Number 2188011 in the adjusted amount of $209,529.75. *See Exhibit 1, Funding Commitment Decision Letter for Form 471 Application 792679.*

In the funding commitment decision letter, the reason for reduction states: "....MR2: The amount of the funding request was changed from $253,436.80 per month to $209,529.75 per month to remove: the ineligible $43,907.05 for SmartNet Maintenance on Priority 1 Equipment." This reduction by SLD is clearly erroneous and should be reversed. The costs removed are associated with the maintenance of service provider owned equipment, provided as a part of an On-Premise Priority One equipment bundle for a wide-area network.

The SLD's funding reduction decision is without merit and without justification. West Contra Costa respectfully requests the Commission to overturn the funding reduction and return the application to SLD for full funding.

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[1] Contra Costa's Billed Entity Number (BEN) is 144237.

Background

In the FY2010 funding year, West Contra Costa issued a Form 470 and an associated Request for Proposal (RFP) seeking bid responses for a "WAN End to End Managed Solution." As a result of that bid process, West Contra Costa entered into a multi-year contractual relationship with AT&T for the provision of a managed Wide Area Network (WAN) solution – an On-Premise Priority 1 bundled solution, an E-rate eligible service. There is no dispute in this appeal about whether AT&T's managed WAN solution is an eligible On-Premise Priority 1 Service, nor is there a dispute about determining elements of an On-Premise Priority 1 Service.

The sole dispute is whether the associated maintenance fees of the equipment are eligible as Priority 1 cost. West Contra Costa asserts that these fees are undoubtedly part of the eligible bundled service price and fully eligible as Priority 1 under current Federal Communications Commission (FCC) and USAC guidance. To hold anything else significantly alters a major component of the Eligible Services List without the hallmark elements of due process – notice and opportunity to be heard.

On-Premise Priority 1 Equipment Maintenance Costs

According to guidance available on the USAC website, "[e]quipment located at the applicant site can receive funding as part of telecommunications or Internet access service in certain limited conditions."[2] The issue of the definition and eligibility of On-Premise Priority 1 equipment has been discussed and decided by the FCC in the landmark Tennessee Order.[3] The purpose of this appeal is not to challenge or test the premise of the Tennessee Order. It is not disputed that West Contra Costa's request for a managed

[2] http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/priority-one.aspx
[3] FCC 99-216, Released August 11, 1999

WAN – and AT&T's offered service – falls within the four corners of the Eligible Services List.

At issue in this appeal are the managed WAN equipment maintenance fees – known as "SmartNet" fees that were included in the funding request for the service request.

USAC guidance provides:

> "Maintenance is the Responsibility of the Service Provider. Since the on-premise components are merely a part of service provider infrastructure used to provide a Telecommunications or Internet Access service, then the service provider must maintain the components as part of the service provided. ***The charges of the service provider can include a separate maintenance fee.*** The applicant may not contract with a different party for maintenance of the service provider facilities, nor may the applicant provide its own maintenance of service provider components."[4]

Hence, by USAC's own publically accessible guidance, a separate maintenance fee charge is allowable as an eligible cost. Yet, a PIA review of West Contra Costa's application REMOVED the maintenance fee and deemed it ineligible as a Priority 1 cost – suggesting instead that the cost be moved to the "Basic Maintenance of Internal Connections" category of service. West Contra Costa demurred at the suggestion of moving the maintenance fee because of the guidance cited above from the USAC website and also, the logical conclusion that the fee couldn't be a Basic Maintenance of Internal Connections cost – as the service was NOT an Internal Connections request and is not an Internal Connections service. It is an eligible Telecommunications service and as the guidance above suggests, maintenance fees are acceptable.

The PIA review of this particular FRN was exceptionally lengthy – culminating in more than 17 exchanges between West Contra Costa and various members of PIA and

[4] http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/priority-one.aspx (emphasis added)

PIA management. It would be an imprudent consideration of the Commission's time to recount each conversation in the body of this Request, therefore the complete compilation of PIA requests and West Contra Costa's responses are attached to this Request for Review as Exhibit 2 and are incorporated herein.

However, it is notable to discuss that at the time the PIA reviewer informed West Contra Costa of the maintenance fee removal, West Contra Costa asked for supporting documentation for the basis of the removal. The reviewer was unable to give any. West Contra Costa reached out then to the PIA Manager for the supporting documentation for the basis of removal. The PIA Manager was unable to give any. Further pressed and at West Contra Costa's insistence, the PIA Manager attempted to schedule a conference call with Eric Flock, USAC's person responsible for overseeing the Eligible Services List. The PIA Manager was unable to schedule a call with Mr. Flock, but relayed that Mr. Flock "said that the fee was ineligible." West Contra Costa then implored the PIA Manager to work to schedule a call so that Mr. Flock could be fully informed of the nuances of the complex issue at hand, however it was never scheduled.

Determining Ineligibility

The issue of SmartNet maintenance undoubtedly affects hundreds, if not thousands, of Priority One funding requests each funding year. Suddenly deeming the separate maintenance fee as ineligible for support – for seemingly only one E-rate applicant - is a significant program change that USAC lacks proper regulatory authority to execute. Certainly, the actions of PIA in removing the maintenance fees contravened USAC's own guidance given on the USAC website. It also contravenes the most current and FCC approved Eligible Services List and infringes upon the principles of the

Tennessee Order – again, all without the proper regulatory authority. By the 1996 Telecommunications Act, the FCC is the regulatory parent of the Universal Service Fund programs. USAC is a non-federal administrative company serving at the pleasure of the FCC to conduct day-to-day operations of managing the USF programs. While the USAC certainly is in a position to give valuable advice to the FCC regarding issues of applicant demand for eligible products, USAC is not in a position to make mid-application window decisions regarding eligibility of costs. Additionally, allowing USAC making substantive policy changes at the whim of PIA employees or other staff sets an exceptionally dangerous precedent for Universal Service programs. As the FCC works diligently to improve the E-rate application process for schools and libraries by instituting orders such as *Bishop Perry* (allowing for corrections of ministerial and clerical errors by applicants so that applicants do not lose funding over correctable errors), allowing a significant substantive change to the program in SmartNet maintenance fees during an application year is completely detrimental to the FCC's goals.

Conclusion

PIA's removal of costs for the On-Premise Priority 1 maintenance fees was without merit and without justification. USAC's guidance allows for the inclusion of a separate maintenance fee in On-Premise Priority 1 bundled services and USAC does not have authority to disallow those costs. Therefore, this FRN should be remanded to USAC for full funding of the eligible On-Premise Priority One service.

Respectfully Submitted,

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